

106TH CONGRESS  
1ST SESSION

# S. 438

To provide for the settlement of the water rights claims of the Chippewa Cree Tribe of the Rocky Boy's Reservation, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 1999

Mr. BURNS (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MAY 27, 1999

Committee discharged; referred to the Committee on Indian Affairs with instructions that at such time as the Committee on Indian Affairs reports the measure, it be referred to the Committee on Energy and Natural Resources for a period not to exceed 60 calendar days and that if the Committee on Energy and Natural Resources has not reported the measure prior to the expiration of the 60 calendar day period, the Energy Committee be discharged from further consideration of the measure and that the measure be then placed on the calendar

JULY 22, 1999

Reported by Mr. CAMPBELL, without amendment

JULY 22, 1999

Referred to the Committee on Energy and Natural Resources for a period not to exceed 60 calendar days

---

## A BILL

To provide for the settlement of the water rights claims of the Chippewa Cree Tribe of the Rocky Boy's Reservation, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Chippewa Cree Tribe  
 5       of the Rocky Boy’s Reservation Indian Reserved Water  
 6       Rights Settlement Act of 1999”.

7       **SEC. 2. FINDINGS.**

8       Congress finds that—

9               (1) in fulfillment of its trust responsibility to  
 10       Indian tribes and to promote tribal sovereignty and  
 11       economic self-sufficiency, it is the policy of the  
 12       United States to settle the water rights claims of the  
 13       tribes without lengthy and costly litigation;

14              (2) the Rocky Boy’s Reservation was estab-  
 15       lished as a homeland for the Chippewa Cree Tribe;

16              (3) adequate water for the Chippewa Cree  
 17       Tribe of the Rocky Boy’s Reservation is important  
 18       to a permanent, sustainable, and sovereign homeland  
 19       for the Tribe and its members;

20              (4) the sovereignty of the Chippewa Cree Tribe  
 21       and the economy of the Reservation depend on the  
 22       development of the water resources of the Reserva-  
 23       tion;

24              (5) the planning, design, and construction of  
 25       the facilities needed to utilize water supplies effec-

1       tively are necessary to the development of a viable  
2       Reservation economy and to implementation of the  
3       Chippewa Cree-Montana Water Rights Compact;

4           (6) the Rocky Boy's Reservation is located in a  
5       water-short area of Montana and the Compact con-  
6       templates the development of additional water sup-  
7       plies, including importation of domestic water, to  
8       meet the needs of the Chippewa Cree Tribe;

9           (7) proceedings to determine the full extent of  
10      the water rights of the Chippewa Cree Tribe are cur-  
11      rently pending before the Montana Water Court as  
12      a part of In the Matter of the Adjudication of All  
13      Rights to the Use of Water, Both Surface and Un-  
14      derground, within the State of Montana;

15          (8) recognizing that final resolution of the gen-  
16      eral stream adjudication will take many years and  
17      entail great expense to all parties, prolong uncer-  
18      tainty as to the availability of water supplies, and  
19      seriously impair the long-term economic planning  
20      and development of all parties, the Chippewa Cree  
21      Tribe and the State of Montana entered into the  
22      Compact on April 14, 1997; and

23          (9) the allocation of water resources from the  
24      Tiber Reservoir to the Chippewa Cree Tribe under  
25      this Act is uniquely suited to the geographic, social,

1 and economic characteristics of the area and situa-  
2 tion involved.

3 **SEC. 3. PURPOSES.**

4 The purposes of this Act are as follows:

5 (1) To achieve a fair, equitable, and final settle-  
6 ment of all claims to water rights in the State of  
7 Montana for—

8 (A) the Chippewa Cree Tribe; and

9 (B) the United States for the benefit of  
10 the Chippewa Cree Tribe.

11 (2) To approve, ratify, and confirm, as modified  
12 in this Act, the Chippewa Cree-Montana Water  
13 Rights Compact entered into by the Chippewa Cree  
14 Tribe of the Rocky Boy's Reservation and the State  
15 of Montana on April 14, 1997, and to provide fund-  
16 ing and other authorization necessary for the imple-  
17 mentation of the Compact.

18 (3) To authorize the Secretary of the Interior  
19 to execute and implement the Compact referred to in  
20 paragraph (2) and to take such other actions as are  
21 necessary to implement the Compact in a manner  
22 consistent with this Act.

23 (4) To authorize Federal feasibility studies de-  
24 signed to identify and analyze potential mechanisms  
25 to enhance, through conservation or otherwise, water

1 supplies in North Central Montana, including mech-  
2 anisms to import domestic water supplies for the fu-  
3 ture growth of the Rocky Boy's Indian Reservation.

4 (5) To authorize certain projects on the Rocky  
5 Boy's Indian Reservation, Montana, in order to im-  
6 plement the Compact.

7 (6) To authorize certain modifications to the  
8 purposes and operation of the Bureau of Reclama-  
9 tion's Tiber Dam and Lake Elwell on the Marias  
10 River in Montana in order to implement the Com-  
11 pact.

12 (7) To authorize the appropriation of funds  
13 necessary for the implementation of the Compact.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) COMPACT.—The term “Compact” means  
17 the water rights compact between the Chippewa  
18 Cree Tribe of the Rocky Boy's Reservation and the  
19 State of Montana contained in section 85–20–601 of  
20 the Montana Code Annotated (1997).

21 (2) FINAL.—The term “final” with reference to  
22 approval of the decree in section 5(b) means comple-  
23 tion of any direct appeal to the Montana Supreme  
24 Court of a final decree by the Water Court pursuant  
25 to section 85–2–235 of the Montana Code Anno-

tated (1997), or to the Federal Court of Appeals, including the expiration of the time in which a petition for certiorari may be filed in the United States Supreme Court, denial of such a petition, or the issuance of the Supreme Court’s mandate, whichever occurs last.

(3) FUND.—The term “Fund” means the Chippewa Cree Indian Reserved Water Rights Settlement Fund established under section 10.

(4) INDIAN TRIBE.—The term “Indian tribe” has the meaning given that term in section 101(2) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a(2)).

(5) MR&I FEASIBILITY STUDY.—The term “MR&I feasibility study” means a municipal, rural, and industrial, domestic, and incidental drought relief feasibility study described in section 7.

(6) MISSOURI RIVER SYSTEM.—The term “Missouri River System” means the mainstem of the Missouri River and its tributaries, including the Marias River.

(7) RECLAMATION LAW.—The term “Reclamation Law” has the meaning given the term “reclamation law” in section 4 of the Act of December 5, 1924 (43 Stat. 701, chapter 4; 43 U.S.C. 371).

1           (8) ROCKY BOY’S RESERVATION; RESERVA-  
 2           TION.—The term “Rocky Boy’s Reservation” or  
 3           “Reservation” means the Rocky Boy’s Reservation  
 4           of the Chippewa Cree Tribe in Montana.

5           (9) SECRETARY.—The term “Secretary” means  
 6           the Secretary of the Interior, or his or her duly au-  
 7           thorized representative.

8           (10) TOWE PONDS.—The term “Towe Ponds”  
 9           means the reservoir or reservoirs referred to as  
 10          “Stoneman Reservoir” in the Compact.

11          (11) TRIBAL COMPACT ADMINISTRATION.—The  
 12          term “Tribal Compact Administration” means the  
 13          activities assumed by the Tribe for implementation  
 14          of the Compact as set forth in Article IV of the  
 15          Compact.

16          (12) TRIBAL WATER CODE.—The term “tribal  
 17          water code” means a water code adopted by the  
 18          Tribe, as provided in the Compact.

19          (13) TRIBAL WATER RIGHT.—

20                (A) IN GENERAL.—The term “Tribal  
 21          Water Right” means the water right set forth  
 22          in section 85–20–601 of the Montana Code An-  
 23          notated (1997).

24                (B) RULE OF CONSTRUCTION.—The defini-  
 25          tion of the term “Tribal Water Right” under

1           this paragraph and the treatment of that right  
 2           under this Act shall not be construed or inter-  
 3           preted as a precedent for the litigation of re-  
 4           served water rights or the interpretation or ad-  
 5           ministration of future compacts between the  
 6           United States and the State of Montana or any  
 7           other State.

8           (14) **TRIBE.**—The term “Tribe” means the  
 9           Chippewa Cree Tribe of the Rocky Boy’s Reserva-  
 10          tion and all officers, agents, and departments there-  
 11          of.

12          (15) **WATER DEVELOPMENT.**—The term “water  
 13          development” includes all activities that involve the  
 14          use of water or modification of water courses or  
 15          water bodies in any way.

16 **SEC. 5. RATIFICATION OF COMPACT AND ENTRY OF DE-**  
 17 **CREE.**

18          (a) **WATER RIGHTS COMPACT APPROVED.**—Except  
 19 as modified by this Act, and to the extent the Compact  
 20 does not conflict with this Act—

21           (1) the Compact, entered into by the Chippewa  
 22          Cree Tribe of the Rocky Boy’s Reservation and the  
 23          State of Montana on April 14, 1997, is hereby ap-  
 24          proved, ratified, and confirmed; and

25           (2) the Secretary shall—



1 (A) execute and implement the Compact  
2 together with any amendments agreed to by the  
3 parties or necessary to bring the Compact into  
4 conformity with this Act; and

5 (B) take such other actions as are nec-  
6 essary to implement the Compact.

7 (b) APPROVAL OF DECREE.—

8 (1) IN GENERAL.—Not later than 180 days  
9 after the date of enactment of this Act, the United  
10 States, the Tribe, or the State of Montana shall pe-  
11 tition the Montana Water Court, individually or  
12 jointly, to enter and approve the decree agreed to by  
13 the United States, the Tribe, and the State of Mon-  
14 tana attached as Appendix 1 to the Compact, or any  
15 amended version thereof agreed to by the United  
16 States, the Tribe, and the State of Montana.

17 (2) RESORT TO THE FEDERAL DISTRICT  
18 COURT.—Under the circumstances set forth in Arti-  
19 cle VII.B.4 of the Compact, 1 or more parties may  
20 file an appropriate motion (as provided in that arti-  
21 cle) in the United States district court of appro-  
22 priate jurisdiction.

23 (3) EFFECT OF FAILURE OF APPROVAL TO BE-  
24 COME FINAL.—In the event the approval by the ap-  
25 propriate court, including any direct appeal, does

1 not become final within 3 years after the filing of  
2 the decree, or the decree is approved but is subse-  
3 quently set aside by the appropriate court—

4 (A) the approval, ratification, and con-  
5 firmation of the Compact by the United States  
6 shall be null and void; and

7 (B) except as provided in sections 11(g)(1)  
8 and 13(a) and (c)(3), this Act shall be of no  
9 further force and effect.

10 **SEC. 6. USE AND TRANSFER OF THE TRIBAL WATER RIGHT.**

11 (a) ADMINISTRATION AND ENFORCEMENT.—As pro-  
12 vided in the Compact, until the adoption and approval of  
13 a tribal water code by the Tribe, the Secretary shall ad-  
14 minister and enforce the Tribal Water Right.

15 (b) TRIBAL MEMBER ENTITLEMENT.—

16 (1) IN GENERAL.—Any entitlement to Federal  
17 Indian reserved water of any tribal member shall be  
18 satisfied solely from the water secured to the Tribe  
19 by the Compact and shall be governed by the terms  
20 and conditions of the Compact.

21 (2) ADMINISTRATION.—An entitlement de-  
22 scribed in paragraph (1) shall be administered by  
23 the Tribe pursuant to a tribal water code developed  
24 and adopted pursuant to Article IV.A.2 of the Com-

1        pact, or by the Secretary pending the adoption and  
 2        approval of the tribal water code.

3        (c) TEMPORARY TRANSFER OF TRIBAL WATER  
 4 RIGHT.—Notwithstanding any other provision of statutory  
 5 or common law, the Tribe may, with the approval of the  
 6 Secretary and subject to the limitations and conditions set  
 7 forth in the Compact, including limitation on transfer of  
 8 any portion of the Tribal Water Right to within the Mis-  
 9 souri River Basin, enter into a service contract, lease, ex-  
 10 change, or other agreement providing for the temporary  
 11 delivery, use, or transfer of the water rights confirmed to  
 12 the Tribe in the Compact, except that no service contract,  
 13 lease, exchange, or other agreement entered into under  
 14 this subsection may permanently alienate any portion of  
 15 the Tribal Water Right.

16 **SEC. 7. FEASIBILITY STUDIES AUTHORIZATION.**

17        (a) MUNICIPAL, RURAL, AND INDUSTRIAL FEASI-  
 18 BILITY STUDY.—

19            (1) IN GENERAL.—

20            (A) STUDY.—The Secretary, through the  
 21 Bureau of Reclamation, shall perform an MR&I  
 22 feasibility study of water and related resources  
 23 in North Central Montana to evaluate alter-  
 24 natives for a municipal, rural, and industrial  
 25 supply for the Rocky Boy's Reservation.

1 (B) USE OF FUNDS MADE AVAILABLE FOR  
2 FISCAL YEAR 1999.—The authority under sub-  
3 paragraph (A) shall be deemed to apply to  
4 MR&I feasibility study activities for which  
5 funds were made available by appropriations for  
6 fiscal year 1999.

7 (2) CONTENTS OF STUDY.—The MR&I feasi-  
8 bility study shall include the feasibility of releasing  
9 the Tribe's Tiber allocation as provided in section 8  
10 into the Missouri River System for later diversion to  
11 a treatment and delivery system for the Rocky Boy's  
12 Reservation.

13 (3) UTILIZATION OF EXISTING STUDIES.—The  
14 MR&I feasibility study shall include utilization of ex-  
15 isting Federal and non-Federal studies and shall be  
16 planned and conducted in consultation with other  
17 Federal agencies, the State of Montana, and the  
18 Chippewa Cree Tribe.

19 (b) ACCEPTANCE OR PARTICIPATION IN IDENTIFIED  
20 OFF-RESERVATION SYSTEM.—The United States, the  
21 Chippewa Cree Tribe of the Rocky Boy's Reservation, and  
22 the State of Montana shall not be obligated to accept or  
23 participate in any potential off-Reservation water supply  
24 system identified in the MR&I feasibility study authorized  
25 in subsection (a).

1 (c) REGIONAL FEASIBILITY STUDY.—

2 (1) IN GENERAL.—

3 (A) STUDY.—The Secretary, through the  
4 Bureau of Reclamation, shall conduct, pursuant  
5 to Reclamation Law, a regional feasibility study  
6 (referred to in this subsection as the “regional  
7 feasibility study”) to evaluate water and related  
8 resources in North-Central Montana in order to  
9 determine the limitations of those resources and  
10 how those resources can best be managed and  
11 developed to serve the needs of the citizens of  
12 Montana.

13 (B) USE OF FUNDS MADE AVAILABLE FOR  
14 FISCAL YEAR 1999.—The authority under sub-  
15 paragraph (A) shall be deemed to apply to re-  
16 gional feasibility study activities for which  
17 funds were made available by appropriations for  
18 fiscal year 1999.

19 (2) CONTENTS OF STUDY.—The regional feasi-  
20 bility study shall—

21 (A) evaluate existing and potential water  
22 supplies, uses, and management;

23 (B) identify major water-related issues, in-  
24 cluding environmental, water supply, and eco-  
25 nomic issues;

1 (C) evaluate opportunities to resolve the  
2 issues referred to in subparagraph (B); and

3 (D) evaluate options for implementation of  
4 resolutions to the issues.

5 (3) REQUIREMENTS.—Because of the regional  
6 and international impact of the regional feasibility  
7 study, the study may not be segmented. The re-  
8 gional study shall—

9 (A) utilize, to the maximum extent pos-  
10 sible, existing information; and

11 (B) be planned and conducted in consulta-  
12 tion with all affected interests, including inter-  
13 ests in Canada.

14 **SEC. 8. TIBER RESERVOIR ALLOCATION.**

15 (a) ALLOCATION OF WATER TO THE TRIBE.—

16 (1) IN GENERAL.—The Secretary shall perma-  
17 nently allocate to the Tribe, without cost to the  
18 Tribe, 10,000 acre-feet per year of stored water  
19 from the water right of the Bureau of Reclamation  
20 in Lake Elwell, Lower Marias Unit, Upper Missouri  
21 Division, Pick-Sloan Missouri Basin Program, Mon-  
22 tana, measured at the outlet works of the dam or at  
23 the diversion point from the reservoir. The allocation  
24 shall become effective when the decree referred to in

1 section 5(b) has become final in accordance with  
2 that section.

3 (2) AGREEMENT.—The Secretary shall enter  
4 into an agreement with the Tribe setting forth the  
5 terms of the allocation and providing for the Tribe’s  
6 use or temporary transfer of water stored in Lake  
7 Elwell, subject to the terms and conditions of the  
8 Compact and this Act.

9 (3) PRIOR RESERVED WATER RIGHTS.—The al-  
10 location provided in this section shall be subject to  
11 the prior reserved water rights, if any, of any Indian  
12 tribe, or person claiming water through any Indian  
13 tribe.

14 (b) USE AND TEMPORARY TRANSFER OF ALLOCA-  
15 TION.—

16 (1) IN GENERAL.—Subject to the limitations  
17 and conditions set forth in the Compact and this  
18 Act, the Tribe shall have the right to devote the  
19 water allocated by this section to any use, including  
20 agricultural, municipal, commercial, industrial, min-  
21 ing, or recreational uses, within or outside the Rocky  
22 Boy’s Reservation.

23 (2) CONTRACTS AND AGREEMENTS.—Notwith-  
24 standing any other provision of statutory or common  
25 law, the Tribe may, with the approval of the Sec-

1       retary and subject to the limitations and conditions  
2       set forth in the Compact, enter into a service con-  
3       tract, lease, exchange, or other agreement providing  
4       for the temporary delivery, use, or transfer of the  
5       water allocated by this section, except that no such  
6       service contract, lease, exchange, or other agreement  
7       may permanently alienate any portion of the tribal  
8       allocation.

9       (c) REMAINING STORAGE.—The United States shall  
10      retain the right to use for any authorized purpose, any  
11      and all storage remaining in Lake Elwell after the alloca-  
12      tion made to the Tribe in subsection (a)(1).

13      (d) WATER TRANSPORT OBLIGATION; DEVELOP-  
14      MENT AND DELIVERY COSTS.—The United States shall  
15      have no responsibility or obligation to provide any facility  
16      for the transport of the water allocated by this section to  
17      the Rocky Boy's Reservation or to any other location. Ex-  
18      cept for the contribution set forth in section 11(c)(3), the  
19      cost of developing and delivering the water allocated by  
20      this section or any other supplemental water to the Rocky  
21      Boy's Reservation shall not be borne by the United States.

22      (e) ACT NOT PRECEDENTIAL.—The provisions of  
23      this section regarding the allocation of water resources  
24      from the Tiber Reservoir to the Tribe shall not be con-



1 strued as precedent in the litigation or settlement of any  
2 other Indian water right claims.

3 **SEC. 9. ON-RESERVATION WATER RESOURCES DEVELOP-**  
4 **MENT.**

5 (a) WATER DEVELOPMENT PROJECTS.—The Sec-  
6 retary, through the Bureau of Reclamation, is authorized  
7 and directed to plan, design, and construct, or to provide,  
8 pursuant to subsection (b), for the planning, design, and  
9 construction of the following water development projects  
10 on the Rocky Boy's Reservation:

11 (1) Bonneau Dam and Reservoir Enlargement.

12 (2) East Fork of Beaver Creek Dam Repair  
13 and Enlargement.

14 (3) Brown's Dam Enlargement.

15 (4) Towe Ponds' Enlargement.

16 (5) Such other water development projects as  
17 the Tribe shall from time to time consider appro-  
18 priate.

19 (b) IMPLEMENTATION AGREEMENT.—The Secretary,  
20 at the request of the Tribe, shall enter into an agreement,  
21 or, if appropriate, renegotiate an existing agreement, with  
22 the Tribe to implement the provisions of this Act through  
23 the Tribe's annual funding agreement entered into under  
24 the self-governance program under title IV of the Indian  
25 Self-Determination and Education Assistance Act (25

1 U.S.C. 458aa et seq.) by which the Tribe shall plan, de-  
 2 sign, and construct any or all of the projects authorized  
 3 by this section.

4 (c) BUREAU OF RECLAMATION PROJECT ADMINIS-  
 5 TRATION.—

6 (1) IN GENERAL.—Congress finds that the Sec-  
 7 retary, through the Bureau of Reclamation, has en-  
 8 tered into an agreement with the Tribe, pursuant to  
 9 title IV of the Indian Self-Determination and Edu-  
 10 cation Assistance Act (25 U.S.C. 458aa et seq.)—

11 (A) defining and limiting the role of the  
 12 Bureau of Reclamation in its administration of  
 13 the projects authorized in subsection (a);

14 (B) establishing the standards upon which  
 15 the projects will be constructed; and

16 (C) for other purposes necessary to imple-  
 17 ment this section.

18 (2) AGREEMENT.—The agreement referred to  
 19 in paragraph (1) shall become effective when the  
 20 Tribe exercises its right under subsection (b).

21 **SEC. 10. CHIPPEWA CREE INDIAN RESERVED WATER**  
 22 **RIGHTS SETTLEMENT TRUST FUND.**

23 (a) ESTABLISHMENT OF TRUST FUND.—

24 (1) IN GENERAL.—

1 (A) ESTABLISHMENT.—There is hereby es-  
 2 tablished in the Treasury of the United States  
 3 a trust fund for the Chippewa Cree Tribe of the  
 4 Rocky Boy's Reservation to be known as the  
 5 “Chippewa Cree Indian Reserved Water Rights  
 6 Settlement Trust Fund”.

7 (B) AVAILABILITY OF AMOUNTS IN  
 8 FUND.—

9 (i) IN GENERAL.—Amounts in the  
 10 Fund shall be available to the Secretary  
 11 for management and investment on behalf  
 12 of the Tribe and distribution to the Tribe  
 13 in accordance with this Act.

14 (ii) AVAILABILITY.—Funds made  
 15 available from the Fund under this section  
 16 shall be available without fiscal year limita-  
 17 tion.

18 (2) MANAGEMENT OF FUND.—The Secretary  
 19 shall deposit and manage the principal and interest  
 20 in the Fund in a manner consistent with subsection  
 21 (b) and other applicable provisions of this Act.

22 (3) CONTENTS OF FUND.—The Fund shall con-  
 23 sist of the amounts authorized to be appropriated to  
 24 the Fund under section 11(c) and such other

1 amounts as may be transferred or credited to the  
2 Fund.

3 (4) WITHDRAWAL.—The Tribe, with the ap-  
4 proval of the Secretary, may withdraw the Fund and  
5 deposit it in a mutually agreed upon private finan-  
6 cial institution. That withdrawal shall be made pur-  
7 suant to the American Indian Trust Fund Manage-  
8 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).

9 (5) ACCOUNTS.—The Secretary of the Interior  
10 shall establish the following accounts in the Fund  
11 and shall allocate appropriations to the various ac-  
12 counts as required in this Act:

13 (A) The Tribal Compact Administration  
14 Account.

15 (B) The Economic Development Account.

16 (C) The Future Water Supply Facilities  
17 Account.

18 (b) FUND MANAGEMENT.—

19 (1) IN GENERAL.—

20 (A) AMOUNTS IN FUND.—The Fund shall  
21 consist of such amounts as are appropriated to  
22 the Fund and allocated to the accounts of the  
23 Fund by the Secretary as provided in this Act  
24 and in accordance with the authorizations for  
25 appropriations in paragraphs (1), (2), and (3)

of section 11(c), together with all interest that accrues in the Fund.

(B) MANAGEMENT BY SECRETARY.—The Secretary shall manage the Fund, make investments from the Fund, and make available funds from the Fund for distribution to the Tribe in a manner consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) TRIBAL MANAGEMENT.—

(A) IN GENERAL.—If the Tribe exercises its right pursuant to subsection (a)(4) to withdraw the Fund and deposit it in a private financial institution, except as provided in the withdrawal plan, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over the accounting, disbursement, or investment of the funds.

(B) WITHDRAWAL PLAN.—The withdrawal plan shall provide for—

(i) the creation of accounts and allocation to accounts in a fund established under the plan in a manner consistent with subsection (a); and

1 (ii) the appropriate terms and condi-  
2 tions, if any, on expenditures from the  
3 fund (in addition to the requirements of  
4 the plans set forth in paragraphs (2) and  
5 (3) of subsection (c)).

6 (c) USE OF FUND.—The Tribe shall use the Fund  
7 to fulfill the purposes of this Act, subject to the following  
8 restrictions on expenditures:

9 (1) Except for \$400,000 necessary for capital  
10 expenditures in connection with the Tribal Compact  
11 Administration, only interest accrued on the Tribal  
12 Compact Administration Account referred to in sub-  
13 section (a)(5)(A) shall be available to satisfy the  
14 Tribe's obligations for Tribal Compact Administra-  
15 tion under the provisions of the Compact.

16 (2) Both principal and accrued interest on the  
17 Economic Development Account referred to in sub-  
18 section (a)(5)(B) shall be available to the Tribe for  
19 expenditure pursuant to an economic development  
20 plan approved by the Secretary.

21 (3) Both principal and accrued interest on the  
22 Future Water Supply Facilities Account referred to  
23 in subsection (a)(5)(C) shall be available to the  
24 Tribe for expenditure pursuant to a water supply  
25 plan approved by the Secretary.

1 (d) INVESTMENT OF FUND.—

2 (1) IN GENERAL.—

3 (A) APPLICABLE LAWS.—The Secretary  
4 shall invest amounts in the Fund in accordance  
5 with—

6 (i) the Act of April 1, 1880 (21 Stat.  
7 70, chapter 41; 25 U.S.C. 161);

8 (ii) the first section of the Act entitled  
9 “An Act to authorize the payment of inter-  
10 est of certain funds held in trust by the  
11 United States for Indian tribes”, approved  
12 February 12, 1929 (25 U.S.C. 161a); and

13 (iii) the first section of the Act enti-  
14 tled “An Act to authorize the deposit and  
15 investment of Indian funds”, approved  
16 June 24, 1938 (25 U.S.C. 162a).

17 (B) CREDITING OF AMOUNTS TO THE  
18 FUND.—The interest on, and the proceeds from  
19 the sale or redemption of, any obligations of the  
20 United States held in the Fund shall be cred-  
21 ited to and form part of the Fund. The Sec-  
22 retary of the Treasury shall credit to each of  
23 the accounts contained in the Fund a propor-  
24 tionate amount of that interest and proceeds.

25 (2) CERTAIN WITHDRAWN FUNDS.—

1           (A) IN GENERAL.—Amounts withdrawn  
2           from the Fund and deposited in a private finan-  
3           cial institution pursuant to a withdrawal plan  
4           approved by the Secretary under the American  
5           Indian Trust Fund Management Reform Act of  
6           1994 (25 U.S.C. 4001 et seq.) shall be invested  
7           by an appropriate official under that plan.

8           (B) DEPOSIT OF INTEREST AND PRO-  
9           CEEDS.—The interest on, and the proceeds  
10          from the sale or redemption of, any obligations  
11          held under this paragraph shall be deposited in  
12          the private financial institution referred to in  
13          subparagraph (A) in the fund established pur-  
14          suant to the withdrawal plan referred to in that  
15          subparagraph. The appropriate official shall  
16          credit to each of the accounts contained in that  
17          fund a proportionate amount of that interest  
18          and proceeds.

19          (e) AGREEMENT REGARDING FUND EXPENDI-  
20          TURES.—If the Tribe does not exercise its right under  
21          subsection (a)(4) to withdraw the funds in the Fund and  
22          transfer those funds to a private financial institution, the  
23          Secretary shall enter into an agreement with the Tribe  
24          providing for appropriate terms and conditions, if any, on



1 expenditures from the Fund in addition to the plans set  
 2 forth in paragraphs (2) and (3) of subsection (c).

3 (f) PER CAPITA DISTRIBUTIONS PROHIBITED.—No  
 4 part of the Fund shall be distributed on a per capita basis  
 5 to members of the Tribe.

6 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) FISCAL YEAR 1999 APPROPRIATIONS.—Of the  
 8 amounts made available by appropriations for fiscal year  
 9 1999 for the Bureau of Reclamation, \$1,000,000 shall be  
 10 used for the purpose of commencing the MR&I feasibility  
 11 study under section 7(a) and the regional study under sec-  
 12 tion 7(c), of which—

13 (1) \$500,000 shall be used for the MR&I study  
 14 under section 7(a); and

15 (2) \$500,000 shall be used for the regional  
 16 study under section 7(c).

17 (b) FEASIBILITY STUDIES.—There is authorized to  
 18 be appropriated to the Department of the Interior, for the  
 19 Bureau of Reclamation, for the purpose of conducting the  
 20 MR&I feasibility study under section 7(a) and the regional  
 21 study under section 7(c), \$3,000,000 for fiscal year 2000,  
 22 of which—

23 (1) \$500,000 shall be used for the MR&I feasi-  
 24 bility study under section 7(a); and

1           (2) \$2,500,000 shall be used for the regional  
2       study under section 7(c).

3       (c) CHIPPEWA CREE FUND.—There is authorized to  
4       be appropriated for the Fund, \$21,000,000 to be allocated  
5       by the Secretary as follows:

6           (1) TRIBAL COMPACT ADMINISTRATION AC-  
7       COUNT.—For Tribal Compact Administration as-  
8       sumed by the Tribe under the Compact and this Act,  
9       \$3,000,000 is authorized to be appropriated for fis-  
10      cal year 2000.

11          (2) ECONOMIC DEVELOPMENT ACCOUNT.—For  
12      tribal economic development, \$3,000,000 is author-  
13      ized to be appropriated for fiscal year 2000.

14          (3) FUTURE WATER SUPPLY FACILITIES AC-  
15      COUNT.—For the total Federal contribution to the  
16      planning, design, construction, operation, mainte-  
17      nance, and rehabilitation of a future water supply  
18      system for the Reservation, there are authorized to  
19      be appropriated—

20                   (A) \$2,000,000 for fiscal year 2000;

21                   (B) \$8,000,000 for fiscal year 2001; and

22                   (C) \$5,000,000 for fiscal year 2002.

23      (d) ON-RESERVATION WATER DEVELOPMENT.—

24           (1) IN GENERAL.—There are authorized to be  
25      appropriated to the Department of the Interior, for

1 the Bureau of Reclamation, for the construction of  
2 the on-Reservation water development projects au-  
3 thorized by section 9—

4 (A) \$13,000,000 for fiscal year 2000, for  
5 the planning, design, and construction of the  
6 Bonneau Dam enlargement, for the develop-  
7 ment of additional capacity in Bonneau Res-  
8 ervoir for storage of water secured to the Tribe  
9 under the Compact;

10 (B) \$8,000,000 for fiscal year 2001, for  
11 the planning, design, and construction of the  
12 East Fork Dam and Reservoir enlargement, of  
13 the Brown's Dam and Reservoir enlargement,  
14 and of the Towe Ponds enlargement of which—

15 (i) \$4,000,000 shall be used for the  
16 East Fork Dam and Reservoir enlarge-  
17 ment;

18 (ii) \$2,000,000 shall be used for the  
19 Brown's Dam and Reservoir enlargement;  
20 and

21 (iii) \$2,000,000 shall be used for the  
22 Towe Ponds enlargement; and

23 (C) \$3,000,000 for fiscal year 2002, for  
24 the planning, design, and construction of such  
25 other water resource developments as the Tribe,

1 with the approval of the Secretary, from time to  
 2 time may consider appropriate or for the com-  
 3 pletion of the 4 projects enumerated in sub-  
 4 paragraphs (A) and (B) of paragraph (1).

5 (2) UNEXPENDED BALANCES.—Any unex-  
 6 pended balance in the funds authorized to be appro-  
 7 priated under subparagraph (A) or (B) of paragraph  
 8 (1), after substantial completion of all of the  
 9 projects enumerated in paragraphs (1) through (4)  
 10 of section 9(a)—

11 (A) shall be available to the Tribe first for  
 12 completion of the enumerated projects; and

13 (B) then for other water resource develop-  
 14 ment projects on the Reservation.

15 (e) ADMINISTRATION COSTS.—There is authorized to  
 16 be appropriated to the Department of the Interior, for the  
 17 Bureau of Reclamation, \$1,000,000 for fiscal year 2000,  
 18 for the costs of administration of the Bureau of Reclama-  
 19 tion under this Act, except that—

20 (1) if those costs exceed \$1,000,000, the Bu-  
 21 reau of Reclamation may use funds authorized for  
 22 appropriation under subsection (d) for costs; and

23 (2) the Bureau of Reclamation shall exercise its  
 24 best efforts to minimize those costs to avoid expendi-

1       tures for the costs of administration under this Act  
2       that exceed a total of \$1,000,000.

3       (f) AVAILABILITY OF FUNDS.—

4           (1) IN GENERAL.—The amounts authorized to  
5       be appropriated to the Fund and allocated to its ac-  
6       counts pursuant to subsection (c) shall be deposited  
7       into the Fund and allocated immediately on appro-  
8       priation.

9           (2) INVESTMENTS.—Investments may be made  
10      from the Fund pursuant to section 10(d).

11          (3) AVAILABILITY OF CERTAIN MONEYS.—The  
12      amounts made available for use under subsection (a)  
13      shall be deemed to have been available for use as of  
14      the date on which those funds were appropriated.  
15      The amounts authorized to be appropriated in sub-  
16      sections (b) and (c)(1) shall be available for use im-  
17      mediately upon appropriation.

18          (4) LIMITATION.—Those moneys allocated by  
19      the Secretary to accounts in the Fund or in a fund  
20      established under section 10(a)(4) shall draw inter-  
21      est consistent with section 10(d), but the moneys au-  
22      thorized to be appropriated under subsection (d) and  
23      paragraphs (2) and (3) of subsection (c) shall not be  
24      available for expenditure until the requirements of  
25      section 5(b) have been met so that the decree has

1       become final and the Tribe has executed the waiver  
2       and release required under section 13(c).

3       (g) RETURN OF FUNDS TO THE TREASURY.—

4           (1) IN GENERAL.—In the event that the ap-  
5       proval, ratification, and confirmation of the Compact  
6       by the United States becomes null and void under  
7       section 5(b), all unexpended funds appropriated  
8       under the authority of this Act together with all in-  
9       terest earned on such funds, notwithstanding wheth-  
10      er the funds are held by the Tribe, a private institu-  
11      tion, or the Secretary, shall revert to the general  
12      fund of the Treasury 12 months after the expiration  
13      of the deadline established in section 5(b).

14       (2) INCLUSION IN AGREEMENTS AND PLAN.—

15      The requirements in paragraph (1) shall be included  
16      in all annual funding agreements entered into under  
17      the self-governance program under title IV of the In-  
18      dian Self-Determination and Education Assistance  
19      Act (25 U.S.C. 458aa et seq.), withdrawal plans,  
20      withdrawal agreements, or any other agreements for  
21      withdrawal or transfer of the funds to the Tribe or  
22      a private financial institution under this Act.

23      (h) WITHOUT FISCAL YEAR LIMITATION.—All money  
24      appropriated pursuant to authorizations under this Act  
25      shall be available without fiscal year limitation.

1 **SEC. 12. STATE CONTRIBUTIONS TO SETTLEMENT.**

2 Consistent with Articles VI.C.2 and C.3 of the Com-  
3 pact, the State contribution to settlement shall be as fol-  
4 lows:

5 (1) The contribution of \$150,000 appropriated  
6 by Montana House Bill 6 of the 55th Legislative  
7 Session (1997) shall be used for the following pur-  
8 poses:

9 (A) Water quality discharge monitoring  
10 wells and monitoring program.

11 (B) A diversion structure on Big Sandy  
12 Creek.

13 (C) A conveyance structure on Box Elder  
14 Creek.

15 (D) The purchase of contract water from  
16 Lower Beaver Creek Reservoir.

17 (2) Subject to the availability of funds, the  
18 State shall provide services valued at \$400,000 for  
19 administration required by the Compact and for  
20 water quality sampling required by the Compact.

21 **SEC. 13. MISCELLANEOUS PROVISIONS.**

22 (a) NONEXERCISE OF TRIBE'S RIGHTS.—Pursuant  
23 to Tribal Resolution No. 40–98, and in exchange for bene-  
24 fits under this Act, the Tribe shall not exercise the rights  
25 set forth in Article VII.A.3 of the Compact, except that  
26 in the event that the approval, ratification, and confirma-

1 tion of the Compact by the United States becomes null  
 2 and void under section 5(b), the Tribe shall have the right  
 3 to exercise the rights set forth in Article VII.A.3 of the  
 4 Compact.

5 (b) WAIVER OF SOVEREIGN IMMUNITY.—Except to  
 6 the extent provided in subsections (a), (b), and (c) of sec-  
 7 tion 208 of the Department of Justice Appropriation Act,  
 8 1953 (43 U.S.C. 666), nothing in this Act may be con-  
 9 strued to waive the sovereign immunity of the United  
 10 States.

11 (c) TRIBAL RELEASE OF CLAIMS AGAINST THE  
 12 UNITED STATES.—

13 (1) IN GENERAL.—Pursuant to Tribal Resolu-  
 14 tion No. 40–98, and in exchange for benefits under  
 15 this Act, the Tribe shall, on the date of enactment  
 16 of this Act, execute a waiver and release of the  
 17 claims described in paragraph (2) against the United  
 18 States, the validity of which are not recognized by  
 19 the United States, except that—

20 (A) the waiver and release of claims shall  
 21 not become effective until the appropriation of  
 22 the funds authorized in section 11 has been  
 23 completed and the decree has become final in  
 24 accordance with the requirements of section  
 25 5(b); and



1 (B) in the event that the approval, ratifica-  
2 tion, and confirmation of the Compact by the  
3 United States becomes null and void under sec-  
4 tion 5(b), the waiver and release of claims shall  
5 become null and void.

6 (2) CLAIMS DESCRIBED.—The claims referred  
7 to in paragraph (1) are as follows:

8 (A) Any and all claims to water rights (in-  
9 cluding water rights in surface water, ground  
10 water, and effluent), claims for injuries to  
11 water rights, claims for loss or deprivation of  
12 use of water rights, and claims for failure to ac-  
13 quire or develop water rights for lands of the  
14 Tribe from time immemorial to the date of rati-  
15 fication of the Compact by Congress.

16 (B) Any and all claims arising out of the  
17 negotiation of the Compact and the settlement  
18 authorized by this Act.

19 (3) SETOFFS.—In the event the waiver and re-  
20 lease do not become effective as set forth in para-  
21 graph (1)—

22 (A) the United States shall be entitled to  
23 setoff against any claim for damages asserted  
24 by the Tribe against the United States, any  
25 funds transferred to the Tribe pursuant to sec-

1           tion 11, and any interest accrued thereon up to  
2           the date of setoff; and

3           (B) the United States shall retain any  
4           other claims or defenses not waived in this Act  
5           or in the Compact as modified by this Act.

6           (d) OTHER TRIBES NOT ADVERSELY AFFECTED.—  
7   Nothing in this Act is intended to quantify or otherwise  
8   adversely affect the land and water rights, or claims or  
9   entitlements to land or water of an Indian tribe other than  
10  the Chippewa Cree Tribe.

11          (e) ENVIRONMENTAL COMPLIANCE.—In imple-  
12  menting the Compact, the Secretary shall comply with all  
13  aspects of the National Environmental Policy Act of 1969  
14  (42 U.S.C. 4321 et seq.), the Endangered Species Act of  
15  1973 (16 U.S.C. 1531 et seq.), and all other applicable  
16  environmental Acts and regulations.

17          (f) EXECUTION OF COMPACT.—The execution of the  
18  Compact by the Secretary as provided for in this Act shall  
19  not constitute a major Federal action under the National  
20  Environmental Policy Act (42 U.S.C. 4321 et seq.). The  
21  Secretary is directed to carry out all necessary environ-  
22  mental compliance required by Federal law in imple-  
23  menting the Compact.

24          (g) CONGRESSIONAL INTENT.—Nothing in this Act  
25  is intended to—

1           (1) alter the trust responsibility of the United  
2       States to the Tribe; or

3           (2) prohibit the Tribe from seeking additional  
4       authorization or appropriation of funds for tribal  
5       programs or purposes.

6       (h) ACT NOT PRECEDENTIAL.—Nothing in this Act  
7       shall be construed or interpreted as a precedent for the  
8       litigation of reserved water rights or the interpretation or  
9       administration of future water settlement Acts.

○